

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

In re:)	
)	
FAMILY PHARMACY, INC., et al.,)	Case No. 18-60521
)	(Joint Administration)
)	Chapter 11
Debtors.¹)	

**DEBTORS' EMERGENCY MOTION TO EMPLOY
INTEGRITY PHARMACY CONSULTANTS LLC AS PHARMACY BROKER**

Family Pharmacy, Inc. ("INC"), Family Pharmacy of Missouri, LLC ("LLC"), HealthTAC Logistics, LLC ("HealthTAC"), Family Property Management, LLC ("FPM"), and Family Pharmacy of Strafford, Inc. ("Strafford"), as debtors and debtors-in-possession (collectively, the "Debtors" or "Family Pharmacy"), by and through counsel, respectfully submit this Motion for Order authorizing the Debtors to employ Integrity Pharmacy Consultants LLC ("Integrity") as Pharmacy Broker ("Motion"). The Debtors state as follows:

1. Debtors commenced the above-captioned cases by filing voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code ("Bankruptcy Code") on April 30, 2018 (the "Petition Date").
2. Debtors continue to operate their businesses and manage their property as debtors-in-possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.
3. No trustee or examiner has been appointed in these cases. No Official Unsecured Creditors Committee ("Committee") has been appointed in these cases.
4. This Court has entered orders directing the joint administration of the Debtors' five bankruptcy cases. [Docket No. 31].
5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and

¹ The Debtors in these proceedings and the last four digits of each Debtor's federal taxpayer identification number are as follows: Family Pharmacy, Inc. (5595); Family Pharmacy of Missouri, LLC (6899); HealthTAC Logistics, LLC (2879); Family Property Management, LLC (2908); and Family Pharmacy of Strafford, Inc. (8943).

1334. Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

Background and Relief Requested

6. The Debtors own and operate the largest group of independently-owned retail pharmacy stores in southwestern Missouri. Collectively, throughout southwestern Missouri, the Debtors operate approximately 20 retail pharmacy locations, two (2) long term care pharmacy locations and one (1) specialty pharmacy location located in Ozark, MO. In addition, Debtors have their corporate headquarters located at 4101 N. State Hwy NN, Ozark, MO, a warehouse facility which is contiguous to the corporate headquarters and a leased billing office in Ozark, MO. The Debtors operate their pharmacies under the “Family Pharmacy” banner.¹ Family Pharmacy has been operating continuously since 1977. Family Pharmacy is ranked as a top 100 U.S. drug store chain, last year ranking number 41 in the U.S. in total sales.

7. A typical Family Pharmacy retail store is approximately 2,500 – 3,000 square feet in size, and offers health screenings, serves prescription needs, offers wellness and holistic care products, health & beauty products, home medical supplies and equipment, and gifts for sale.

8. All of the Debtors’ retail locations are leased from third-parties, other than Bolivar, Fair Grove and Strafford which are owned by FPM and the Joplin location, which is owned by INC. Bank of Missouri has deeds of trust encumbering Fair Grove, Joplin, Strafford, the corporate headquarters and the warehouse. UMB Bank has a deed of trust encumbering Bolivar. For the avoidance of doubt, the DIP Facility Credit Agreement will not constitute a lien of any sort on the Bolivar real estate.

9. The Debtors’ have two long term care (“LTC”) pharmacy locations, one of which (Ozark) is a “closed shop” pharmacy, meaning it is not open to the general retail public. The

¹ www.thefamilyrx.com “BEST Service + LOW Prices”

other LTC (Joplin) is located inside the Joplin retail pharmacy. The LTCs serve over 120 nursing homes, assisted living and residential care facilities, hospices and other specialty providers across southwestern Missouri. All prescriptions from the LTCs are either delivered via drivers who are employees of the Debtors or delivered via courier (e.g. FedEx, UPS, etc.). As noted above, the Debtors have LTCs in Joplin, Missouri and Ozark, Missouri. The Debtors also have LTC customers serviced from the Bolivar, Branson West and Strafford retail pharmacies.

10. The Debtors' two primary operating entities are INC and LLC. INC operates nine (9) retail locations including Strafford¹ and the two (2) LTCs in Joplin and Ozark². LLC operates 11 retail locations³ and the one separate LTC portion of the retail store in Bolivar⁴. Again, LTC customers are also serviced from the Branson West and Strafford retail pharmacies. Strafford is a wholly-owned subsidiary of INC, which operates one retail pharmacy in Strafford, Missouri. HealthTAC is a Missouri limited liability company. HealthTAC is in the business of purchasing generic prescription drugs for resale to INC, LLC and Strafford, and to other non-debtor, unrelated customers. FPM is a holding company whose primary purpose is to be the owner of various parcels of real estate which FPM leases to INC, LLC and Strafford.⁵

11. On May 7, 2018, the Debtors filed their *Motion for Order Approving Auction and Bidding Procedures; Approving Breakup Fee and Reimbursable Expenses; Prescribing Manner*

¹ These INC retail locations include: (1) 7154 State Hwy 14E, Sparta, MO 65753; (2) 285 US Hwy 60W, Republic, MO 65738; (3) 4728 S. Campbell Avenue, Suite 132, Springfield, MO 65810; (4) 916 NW 12th Avenue, Suite F, Ava, MO 65608; (5) 1156 W. Jackson Street, Ozark, MO 65721; (6) 3202 Indiana Avenue, Joplin, MO 64804; (7) 527 W. Kearney Street, Springfield, MO 65803; (8) 520 E. Jackson Street, Willard, MO 65781; and (9) 307 E. Old Route 66, Strafford, Missouri 665757.

² These LTC locations include: (1) 3202 Indiana Avenue, Joplin, MO 64804 and (2) 1142 W. Jackson Street, Ozark, MO 65721.

³ These LLC retail locations include: (1) 1326 W. Broadway Street, Bolivar, MO 65613; (2) 1494 State Hwy 248, Suite D, Branson, MO 65616; (3) 18192 Business 13, Suite A, Branson West, MO 65737; (4) 6809 State Highway 14W, Suite A, Clever, MO 65631; (5) 105 S. Ridgecrest Avenue, Suite 1, Nixa, MO 65714; (6) 225 Cross Creek Blvd., Suite A, Branson, MO 65616; (7) 49 E. Old Mill Road, Fair Grove, MO 65648; (8) 14974 US Highway 160, Forsyth, MO 65653; (9) 180 Mall Road, Hollister, MO 65672; (10) 759 W. Washington Street, Marshfield, MO 65706; and (11) 432 S. Mill Street, Suite 100, Rogersville, MO 65742.

⁴ 1328 W. Broadway Street, Bolivar, MO 65613.

⁵ The Debtors' business facility in Joplin is owned by INC.

of Notice; and Authorizing Sale of Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, Subject to Higher or Better Offers (“Sales Procedure Motion”) (Doc. No. 47).

Pursuant to their Sales Procedure Motion the Debtors seek to sell substantially all of their assets.

12. Maximizing the sales price of their assets is of the utmost importance to the Debtors.

13. Given the limited amount of time which the Debtors have to liquidate their assets, the Debtors have determined that engaging a third-party to assist with the sale of the assets is essential to maximizing sale value.

14. After considering different options, the Debtors have determined that Integrity Pharmacy Consultants LLC (“Integrity”) is the best fit given the circumstances of this case.

15. Attached hereto as **Exhibit “A”** and incorporated by reference herein is a true and exact copy of the Exclusive Listing Agreement that the Debtors desire to execute with Integrity.

16. Attached hereto as **Exhibit “B”** and incorporated by reference herein is a true and exact copy of the Mutual Non-Disclosure Agreement that the Debtors desire to execute with Integrity.

17. The Debtors believe Integrity is uniquely qualified and situated to assist the Debtors in selling substantially all of their assets. Integrity is a fully licensed pharmacy brokerage company with connections throughout this very specialized industry. It has 50 years of experience selling all types of pharmacies, such as retail, long-term care, compounding, and specialty.

18. Debtors believe that Integrity’s extensive experience in this unique industry makes it uniquely qualified to serve as a pharmacy broker for the Debtors.

19. The Exclusive Listing Agreement provides, inter alia, that Integrity will be

compensated if the Pharmacies are sold as follows: “(3%) of the Cash Portion of the Purchase Price as those terms are defined in Section 1.3(a) of the APA for the Pharmacies (and, for the avoidance of doubt, Cash Portion expressly excludes any consideration consisting of a credit bid), provided such Cash Portion of the Purchase Price shall exceed \$9,000,000, from the proceeds of the sale as a carve-out from the liens of Bank of Missouri and/or Cardinal Health (provided, however, that (x) if the Cash Portion of the Purchase Price exceeds the secured claim amounts of the Bank of Missouri and Cardinal Health, the portion of the commission based on such excess Cash Portion of the Purchase Price shall be paid as a carve-out from the liens of J M Smith Corporation, and (y) if the Cash Portion of the Purchase Price exceeds the secured claim amount of J M Smith Corporation, the portion of the commission based on such excess Cash Portion of the Purchase Price shall be paid from unencumbered funds); (ii) if the Cash Portion of the Purchase Price is less than \$9,000,000, then Sellers agree to pay Consultant its actual reasonable out-of-pocket expense and a fixed fee of \$25,000, also from the proceeds of the sale as a carve-out from the liens of Bank of Missouri and/or Cardinal Health”.

20. Pursuant to the Exclusive Listing Agreement, the Debtors agree to pay Integrity all earned fees as soon as practical after approval by the Bankruptcy Court by wire transfer from the settlement funds at closing or out of escrow if applicable.

21. A Declaration has been executed by Sean Duffy of Integrity, which is attached hereto as **Exhibit “C”** and incorporated herein by reference. As can be seen from the Declaration, Integrity is a disinterested party, does not hold an interest adverse to these estates and understands that there is a continuing duty to disclose any such adverse interest. The Declarant does not have any connection with the Debtors, creditor, any other party in interest, their

respective attorneys or accountants, the United States Trustee, or any person employed in the Office of the United States Trustee.

22. Employment of Integrity is in the best interest of the estate.

WHEREFORE, the Debtors respectfully request that the Court enter an Order authorizing the Debtors to (a) employ Integrity as pharmacy broker; (b) execute the Exclusive Listing Agreement (Exhibit A); (c) execute the Mutual Non-Disclosure Agreement (Exhibit B); and (d) entering all other relief in favor of the Debtors that is just and equitable.

Dated: May 18, 2018.

Respectfully submitted,
HUSCH BLACKWELL LLP

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SUMMARY OF EXHIBITS

The following exhibits in reference to the Motion for Order are available upon request:

Exhibit A: Exclusive Listing Agreement

Exhibit B: Mutual Non-Disclosure Agreement

Exhibit C: Declaration